



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/173259

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 30, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regards to overpayments of FoodShare benefits (FS), a telephone hearing was held on April 28, 2016, at Milwaukee, Wisconsin. The record was held open for 10 days for the county to submit additional documents, which have been received.

The issue for determination is whether petitioner's appeal contesting four FoodShare overpayment claims was timely filed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], HSPC  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**  
Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was receiving FS in at least the time periods of May 16 – December 31, 2012 (\$1,370 claim); January 7 – June 30, 2013 (\$962 claim); July 1 – December 31, 2013 (\$906 claim); and January 1 – April 30, 2014 (\$555 claim). See, Exhibit #8; and see, Exhibit #9, the CLAIMS FOR AN INDIVIDUAL screen from the CARES database run on 3/31/16, at DHA, that lists all four FS overpayment claims.
2. On March 27, 2014, the county agency sent four written notice of negative action, i.e., overpayment claims plus overpayment computation worksheets, to the petitioner for FS Claim No. [REDACTED] for

\$1,370; Claim No. [REDACTED] for \$962; FS Claim No. [REDACTED] for \$906; and FS Claim No. [REDACTED] for \$555. Each Claim corresponds to the four FS time periods enumerated in Finding of Fact #1, above. All four notices were sent to the petitioner at her then residence address of [REDACTED] [REDACTED] and there is no notation in Case Comments that the notices were returned as undeliverable in any manner. The notices each informed the petitioner that the reason for each overpayment was due to a "Client Error"; that she and [REDACTED] were liable for each of the four claims; and that if they disagreed, they must appeal within 90 days of the date on the Notices to the Division of Hearings & Appeals, P.O. Box 7875, Madison, WI 53707-7875, or fax it to telephone number 608-264-9885. See, Exhibit #8.

3. The basis for the four overpayments was that the petitioner's husband [REDACTED] had his needs included in the petitioner's FS household in all four overpayment time periods described in Findings of Fact Nos. 1 & 2, but at all of those times he was not a citizen and not a then-qualifying alien. He was not a permanent resident alien during any of these four time periods.
4. On April 7, 2014, the Department's Case Comments note as follows: "pp [ALJ's Note: "Primary Person" in the department's customary parlance.] ..calling to discuss letters she recvd from PIU [Note: "Program Integrity Unit", in the department's parlance.] ...agency gave phone# to call PIU dept directly." See, Exhibit #7, entry for 4/7/14.
5. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on March 30, 2016, by fax transmission.
6. The petitioner still resides at [REDACTED] [REDACTED], [REDACTED], as of the date of the hearing.
7. The negative action in this case was four concurrent FS overpayment determinations totaling \$3,793. See, Exhibit #8.
8. At some point in time unknown after March 27, 2014, the Department recovered a total of \$378 from the petitioner on FS Claim No. [REDACTED], reducing the balance due to \$992 for this claim. See, Exhibit #9, CLAIMS FOR AN INDIVIDUAL screen, run at DHA on 3/31/16.
9. At no time during the hearing did the petitioner ever deny receiving the Notices and worksheets of March 27, 2014, even though the agency discussed the Notices at the hearing while actually providing them during the open records period after the hearing.
10. The petitioner appealed 733 days after the date of the four negative actions taken on March 27, 2014.
11. Subsequent to April 30, 2014, the petitioner acquired a so-called "Green Card" and became a permanent resident alien. He is currently pursuing citizenship.

### DISCUSSION

An administrative law judge can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., § 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 734 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The simple fact of this matter is that the petitioner waited over two years to contest the agency determinations of these overpayments. At some point, the agency even recovered \$378, presumably by benefit offset from the household over a period of time. And still she did not appeal. In addition, it was clear from the documents in the record that she did have contact with the agency less than 11 days after the notices were issued, and she was directly referred to the Program Integrity Unit to discuss questions she had about letters she received just before April 7, 2014. The PIU is the subdivision of the Milwaukee agency that receives FoodShare overpayment referrals from the main income maintenance unit, and

investigates the referrals. Here, the PIU found four overpayment periods had occurred, causing the Notices and Worksheets bearing worker name “Adenkunle Fajembola” to be issued. See, Exhibits #8 & #9. There is no indication these Notices and Worksheets ever returned to the agency as undelivered, and the address used on these documents is exactly identical to the residence address the petitioner used today, and in fact used for this fair hearing request.

Under these facts, I can only conclude that the petitioner has sat on her rights to appeal for far, far too long, and she has lost those rights. The petition for review is untimely as a matter of fact and law and must be dismissed. See, 7 C.F.R. § 273.15(g).

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal concerning all four FS overpayment claims dated March 27, 2014, is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed in its entirety as untimely as a matter of fact and law.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5th day of May, 2016

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 5, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability